

**BEFORE PUBLIC LAW BOARD NO. 6043**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**And**

**CANADIAN NATIONAL/ILLINOIS CENTRAL RAILROAD COMPANY**

**Case No. 9**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

- (1) The ten-day suspension assessed Ballast Regulator Operator W. Gaines for his alleged unauthorized absence on March 8 and 9, 1999, was without just and sufficient cause, arbitrary, and capricious. (System File 0608991/IC-134-99-5.)
- (2) Ballast Regulator Operator W. Gaines shall now be allowed the remedy prescribed in Rule 33(i).

**FINDINGS:**

Claimant W. Gaines was employed by the Carrier as a ballast regulator operator at the time of this claim.

On March 18, 1999, the Carrier notified the Claimant to appear for a formal investigation to determine the facts and place responsibility, if any, in connection with his alleged absence from his assigned position without permission on March 8 and 9, 1999

The hearing took place on March 26, 1999. On April 8, 1999, the Carrier notified the Claimant that he had been found guilty of having violated Rule J of the Carrier's Maintenance of Way Rules – First Edition, and was being assessed discipline of a ten-day suspension, or the equivalent of eighty hours' work, commencing April 12, 1999

The Carrier argues that the Claimant admitted at the investigation that he was absent without permission on March 8 and 9, 1999, when he did not notify his supervisor or foreman that he would be absent. The Carrier contends that the Claimant's argument

that he could not contact a supervisor because there was no answer when he called, which was only one time, does not exempt the Claimant from following the rules. The Carrier also asserts that the doctor's note did not serve as permission to be absent from duty. The Carrier maintains that the Claimant received a fair and impartial hearing and the fact remains that the Claimant was absent from work without authority. The Carrier maintains that the Carrier denied the Claimant's request to be marked up for vacation for the week of March 8, 1999, and that the discipline was warranted considering the Claimant had warning letters on file, as well as two prior suspensions. The Carrier requests that the claim be denied.

The Organization argues that on March 7, 1999, the Claimant had an accident where he was unable to work on March 8 and 9, 1999. The Organization maintains that the Claimant made many attempts to contact his foreman and succeeded on March 10, 1999, and requested to be marked up on vacation for that week. The Organization claims that the Claimant was under a doctor's care from March 8, 1999, through March 14, 1999, and returned to work on March 15, 1999, with a doctor's statement. The Organization maintains that the Claimant was not afforded a fair and impartial investigation and that he had been prejudged because the Carrier officer who preferred the charges was also the one who presided at the investigation into the charges. The Organization also argues that the Carrier failed to prove the charges leveled against the Claimant and that no discipline was warranted; although if discipline is deemed appropriate in this situation, a ten-day suspension is excessive considering that the

Claimant was physically unable to work. The Organization requests that the claim be sustained and that the Claimant be made whole.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being absent without permission beginning on March 8, 1999. The rule requires that employees not be absent unless authorized to do so. The Claimant admitted at the hearing that he did not obtain permission or even notify his supervisors that he would be missing work on the dates at issue.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was issued ten-day suspension. Given the wrongdoing of which the Claimant was clearly guilty in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously by issuing the Claimant a ten-day suspension. Therefore, the claim must be denied.

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**AWARD:**

The claim is denied.

  
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**PETER R. MEYERS**  
Neutral Member

  
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**CARRIER MEMBER**

  
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**ORGANIZATION MEMBER**

**DATED:** 6/29/01

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